

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

STANARD LEROY PHILLIPS,

Plaintiff,

v.

BRYAN COLLIER, ET AL.,

Defendants.

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CIVIL ACTION NO. 5:20-CV-00042-RWS-CMC

ORDER

Plaintiff Stanard Phillips, a prisoner of the Texas Department of Criminal Justice, Correctional Institutions Division proceeding *pro se*, filed this lawsuit under 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act complaining of alleged violations of his rights (Docket No. 1). This Court referred the case to the United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. The named Defendants are TDCJ Executive Director Bryan Collier, Deputy Director of Religious Services Timothy Jones, Rabbi David Goldstein, Chaplain Steven Gibbs, and Warden Polk of the Telford Unit. Plaintiff filed a motion to amend his complaint to substitute Lorie Davis for Collier (Docket No. 18), stating that Davis replaced Collier as Executive Director, which the Magistrate Judge recommended be granted. Respondent says this is not correct, because Collier remains the Executive Director of TDCJ.

In his original complaint, Plaintiff asserted he is not being given kosher meals, he is not allowed to properly perform religious rites or prayers and cannot celebrate religious holidays (except for Pesach) or Sabbath services. He also complained Christians and Muslims receive hot foods for fast breaking while the food service departments puts foods together that Jewish inmates like himself cannot eat.

Defendants filed a motion to dismiss (Docket No. 10), in response to which Plaintiff filed a number of additional documents, including an outline for a Jewish interest correspondence course, a memorandum to him from chaplains Gibbs and Atkinson at the Telford Unit, and four grievances. After review of the pleadings, including the documents Plaintiff filed in response, the Magistrate Judge issued a Report recommending Defendants' motion to dismiss be granted as to the Plaintiff's First Amendment claims against the TDCJ Director, Deputy Director for Religious Services Timothy Jones, and Rabbi Goldstein. The Magistrate Judge further recommended Defendants be ordered to answer the remaining claims, consisting of Plaintiff's RLUIPA claims and his First Amendment claims against Chaplain Gibbs and Warden Polk. Based upon Plaintiff's representations, the Magistrate Judge recommended that Lorie Davis be substituted for Bryan Collier.

Plaintiff did not file objections to the Magistrate Judge's Report. Defendants filed objections contending Plaintiff was incorrect in asserting that Collier is no longer the Executive Director of TDCJ. Defendants explain that Lorie Davis was formerly the director of the Correctional Institutions Division of TDCJ, but she has now retired. Because the Magistrate Judge's recommendation was based upon a representation by the Plaintiff which was in error, this objection is sustained, and the portion of the Report recommending substitution of Davis for Collier cannot be adopted.

The Court has conducted a careful *de novo* review of those portions of the Magistrate Judge's proposed findings and recommendations to which objections were filed. *See* 28 U.S.C. § 636(b)(1) (district judge shall "make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.") Upon such *de novo* review, the Court has determined the Report of the Magistrate Judge is correct except for that portion recommending substitution of Lorie Davis for Bryan Collier. It is accordingly

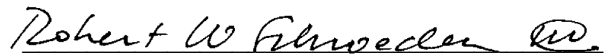
ORDERED that Defendants' objection is sustained and the Report of the Magistrate Judge (Docket No. 21) is **ADOPTED** as the opinion of the District Court except insofar as it recommends substitution of Lorie Davis for Bryan Collier. It is further

ORDERED that Defendants' motion to dismiss (Docket No. 10) is **GRANTED** as to the Plaintiff's First Amendment claims against Executive Director Bryan Collier, Deputy Director of Religious Services Timothy Jones, and Rabbi Goldstein. The motion to dismiss is **DENIED** in all other regards. It is further

ORDERED that Plaintiff's motion to amend his complaint to substitute Lorie Davis for Bryan Collier (Docket No. 18) is **DENIED**. It is further

ORDERED that Defendants shall answer the remaining claims in the lawsuit, consisting of Plaintiff's RLUIPA claims and his First Amendment claims against Chaplain Gibbs and Warden Polk, within 14 days after the date of entry of this order. The deadlines in the scheduling order previously entered by the Court (Docket No. 6) shall go into effect upon the filing of the answer.

So ORDERED and SIGNED this 25th day of September, 2020.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE